

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 DARRIN DUHAMEL,
5 Plaintiff,
6 v.

7 NANCY A. BERRYHILL, Acting
8 Commissioner of Social Security,
9 Defendant.

Case No. 2:17-CV-002858-GMN-EJY

**AMENDED RECOMMENDATION
CLARIFYING ECF NO. 68**

10 On September 16, 2019, the Court issued a detailed Report and Recommendation remanding
11 this matter for further proceedings pursuant to the Social Security Administration's Compassionate
12 Allowance program. In that Report and Recommendation, the Court did not specify whether the
13 remand recommended was pursuant to sentence four or sentence six of 42 U.S.C. § 405(g). The
14 Report and Recommendation also provided a static date upon which Defendant was required to issue
15 a new decision. The Court now issues this Amended Recommendation addressing Defendant's
16 requests appearing in ECF No. 71, and clarifying the recommendations appearing in ECF No. 68.

17 **RECOMMENDATION**

18 **IT IS HEREBY RECOMMENDED** that Plaintiff's Amended Motion for Summary
19 Judgment (ECF No. 52) be DENIED and that Defendant's Cross-Motion to Remand for Further
20 Proceedings (ECF No 57) be GRANTED in part and DENIED in part.

21 **IT IS FURTHER RECOMMENDED** that this matter be remanded to the Commissioner
22 of Social Security under the Compassionate Allowance program as this case has been pending for
23 more than six years, and time is of the essence.

24 **IT IS FURTHER RECOMMENDED** that remand be pursuant to sentence four of 42
25 U.S.C. § 405(g).

IT IS FURTHER RECOMMENDED that Plaintiff be permitted to submit additional evidence within **60 days** of the date of the District Court's Order, and, if needed, receive a new hearing within **150 days** of the date of the District Court's Order, unless Plaintiff is unable to proceed within that timeframe.

IT IS FURTHER RECOMMENDED that Plaintiff's testimony be reevaluated given the additional evidence available and to be provided to the ALJ for consideration in determining the credibility of Plaintiff's testimony. The ALJ shall articulate, if appropriate to the ALJ's reevaluation, the specific basis why he continues to discredit Plaintiff's testimony.

IT IS FURTHER RECOMMENDED that the ALJ reevaluate the analysis of treating physicians' opinions and articulate, if appropriate to the ALJ's reevaluation, why he continues to reject the opinions of these treating physicians.

IT IS FURTHER RECOMMENDED that the ALJ reevaluate all remaining evidence in light of the new evidence presented to assess Plaintiff's symptoms and limitations.

IT IS FURTHER RECOMMENDED that the ALJ take any further action needed to complete the administrative record and to promptly issue a new decision.

IT IS FURTHER RECOMMENDED that the ALJ issue a new decision on Plaintiff's application for benefits within **30 days** after the record closes at the hearing level.

IT IS FURTHER RECOMMENDED that Plaintiff be allowed to return to federal court within **60 days** after the ALJ's opinion on remand if the ALJ does not issue a favorable decision. Plaintiff need not wait for Appeals Council review.

NOTICE

Pursuant to Local Rule IB 3-2, any objection to this Amended Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address

1 and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal
2 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
3 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

4 DATED: October 9, 2019

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8 ELAYNA J. YOUCRAH
9 UNITED STATES MAGISTRATE JUDGE
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